UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DALAH SCHWARTZ on behalf of herself and all other similarly situated consumers

Plaintiff,

-against-

ESTATE INFORMATION SERVICES, LLC
D/B/A EIS COLLECTIONS

Defendant.

CLASS ACTION COMPLAINT

Introduction

1. Plaintiff Dalah Schwartz seeks redress for the illegal practices of Estate Information Services, LLC d/b/a EIS Collections in which it unlawfully engaged in the collection of consumer debts in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et *seq*. ("FDCPA").

2. Plaintiff is a citizen of the State of New York who resides within this District.

3. Plaintiff is a consumer as that term is defined by Section 1692(a)(3) of the FDCPA.

4. The alleged debt that Defendant sought to collect from the Plaintiff involves a consumer debt.

5. Upon information and belief, Defendant's principal place of business is located within Columbus, Ohio.

6. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.

7. Defendant is a "debt collector" as that term is defined by the FDCPA, 15 U.S.C. § 1692(a)(6).

Jurisdiction and Venue

8. This Court has federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as the acts and transactions that give rise to this action occurred, in substantial part, within this district.

Allegations Particular to Dalah Schwartz

10. Upon information and belief, on a date better known by Defendant, Defendant began to attempt to collect an alleged consumer debt from the Plaintiff.

11. On or about January 16, 2014, Defendant sent the Plaintiff a collection letter seeking to collect a balance allegedly incurred for personal purposes.

12. The said collection letter states in pertinent: "Unless, within thirty (30) days after receipt of this notice you dispute the validity of the debt, or any portion thereof, we will assume the debt is valid. If you notify us within said 30 days that the debt or any portion thereof is disputed, we will obtain verification of the debt and we will mail such verification to you. In addition, upon your written request within said 30 days, we will provide the name and address of the original creditor if different from the current creditor."

13. Said language is in violation of 1692g(a)(4) and (5) because the letter failed to advise the debtor that to be entitled to a verification of the debt, the request had to be in writing.

14. Validation of debts [15 USC 1692g] states:

> (a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing --
>
> (4) a statement that if the consumer notifies the debt collector **in writing** within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; (emphasis added)

15. Camacho v. Bridgeport Fin. Inc., 430 F.3d 1078, 1082 (9th Cir. 2005). (The court held that the FDCPA "assigns lesser rights to debtors who orally dispute a debt and greater rights to debtors who dispute it in writing. “The plain meaning of § 1692g is that debtors can trigger the rights under subsection (a)(3) by either an oral or written 'dispute,' while debtors can trigger the rights under subsections (a)(4) and (a)(5) **only through written dispute."** Id. (emphasis added).); See also, Bicking v. Law Offices of Rubenstein & Cogan, 783 F. Supp. 2d 841, 2011 U.S. Dist. LEXIS 48623 (E.D. Va. 2011) (Defendants' failure to include the "in writing" requirement could easily deceive the least sophisticated debtor into believing that oral notice is sufficient, and therefore cause the consumer to forfeit his or her rights under subsections (a)(4) and (5) of Section 1692g. The court also held that the alleged violations of Sections 1692g(a)(4) and (5) therefore also state a claim under § 1692e(10).); Welker v. Law Office of Daniel J. Horwitz, 699 F. Supp. 2d 1164 (S.D. Cal. 2010). (Defendant violated § 1692g(a)(4) and (5) because his dunning letter failed to advise the debtor that to be entitled to a verification of the debt or to obtain the name and address of the original creditor under the request had to be in writing.); Beasley

v. Sessoms & Rogers, P.A., No. 5:09-CV-43-D, 2010 U.S. Dist. LEXIS 52010, at *18-19 (E.D.N.C. Mar. 1, 2010). (Omission of the requirement that the consumer request verification in writing violated § 1692g(a). The court rejected defendants' argument that the validation notice ''clearly implies receiving written notification'' and found that the notice violated § 1692g(a)(4).); Nero v. Law Office of Streeter, P.L.L.C., 655 F. Supp. 2d 200, 206 (E.D. N.Y. 2009). ("[T]he validation notice clearly omitted an important term--that the consumer must inform the debt collector in writing to be entitled to verification of the debt [pursuant to sub-section (a)(4)]."); Yrok Gee Au Chan v. North Am. Collectors, Inc., No. C 06-0016 JL, 2006 U.S. Dist. LEXIS 13353, 2006 WL 778642, at *6 (N.D. Cal. Mar. 24, 2006). (Finding a violation of the FDCPA where the validation notice "fail[ed] to inform the consumer that he must dispute the debt in writing to preserve his right [under sub-section (a)(4)]" (emphasis in original.)); McCabe v. Crawford & Co., 272 F. Supp. 2d 736, 743 (N.D. Ill. 2003). ("[B]y omitting the words 'in writing,' *Crawford* did not effectively convey to the consumer his rights under [sub-section (a)(4) of] the FDCPA and thus violated the Act." (citation omitted)); Grief v. Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, 217 F. Supp. 2d 336, 340 (E.D. N.Y. 2002). ("Without a statement that [the requests under sub-sections (a)(4) and (a)(5)] must be in writing, the least sophisticated consumer is not simply uncertain of her rights under the statute, she is completely unaware of them." (internal citation omitted.)); Ehrich v. I.C. Sys., 2010 U.S. Dist. LEXIS 4367 *18-19 (E.D.N.Y. Jan. 20, 2010). (Oral requests by consumers do not protect their rights under the FDCPA.)

AS AND FOR A FIRST CAUSE OF ACTION

Violations of the Fair Debt Collection Practices Act brought by Plaintiff on behalf of herself and the members of a class, as against the Defendant.

16. Plaintiff re-states, re-alleges, and incorporates herein by reference, paragraphs one (1) through fifteen (15) as if set forth fully in this cause of action.

17. This cause of action is brought on behalf of Plaintiff and the members of a class.

18. The class consists of all persons whom Defendant's records reflect resided in the State of New York and who were sent a collection letter (a) bearing the Defendant's letterhead in substantially the same form as the letter sent to the Plaintiff, sent within one year prior to the date of the within complaint; (b) the collection letter was sent to a consumer seeking payment of a consumer debt purportedly owed to Citibank NA; and (c) the collection letter was not returned by the postal service as undelivered; (d) and the Plaintiff asserts that the letter contained violations of 15 U.S.C. §§ 1692g(a)(4) and 1692g(a)(5).

19. Pursuant to Federal Rule of Civil Procedure 23, a class action-n is appropriate and preferable in this case because:

    (a) Based on the fact that a form collection letter is at the heart of this litigation, the class is so numerous that joinder of all members is impracticable.

    (b) There are questions of law and fact common to the class and these questions predominate over any question(s) affecting only individual class members. The principal question presented by this claim is whether the Defendant violated the FDCPA.

(c) The only individual issue involves the identification of the consumers who received such collection letters (*i.e.* the class members). This is purely a matter capable of ministerial determination from the records of the Defendant.

(d) The claims of the Plaintiff are typical of those of the class members. All of the respective class claims are based on substantially similar facts and legal theories.

(e) The Plaintiff will fairly and adequately represent the class members' interests. The Plaintiff has retained counsel experienced in bringing class actions and collection abuse claims. The Plaintiff's interests are consistent with those of the members of the class.

20. A class action is superior for the fair and efficient adjudication of the class members' claims. Congress specifically envisions class actions as a principal means of enforcing the FDCPA. 15 U.S.C. 1692(k). The members of the class are generally unsophisticated individuals, whose rights will not be vindicated in the absence of a class action. Prosecution of separate actions by individual members of the classes would create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties and would not be in the interest of judicial economy.

21. If the facts are discovered to be appropriate, the Plaintiff will seek to certify a class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

22. Collection attempts, such as those made by the Defendant are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer."

Violations of the Fair Debt Collection Practices Act

23. The Defendant's actions as set forth above in the within complaint violates the Fair Debt Collection Practices Act.

24. Because the Defendant violated of the Fair Debt Collection Practices Act, the Plaintiff and the members of the class are entitled to damages in accordance with the Fair Debt Collection Practices Act.

WHEREFORE, Plaintiff, respectfully requests that this Court enter judgment in her favor and against the Defendant and award damages as follows:

(a) Statutory and actual damages provided under the FDCPA, 15 U.S.C. 1692(k); And

(b) Attorney fees, litigation expenses and costs incurred in bringing this action; and

(c) Any other relief that this Court deems appropriate and just under the circumstances.

Dated: Brooklyn, New York
September 9, 2014

/s/

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Plaintiff requests trial by jury on all issues so triable.

/s/

Adam J. Fishbein (AF-9508)